DIVISION OF INSPECTION AND CONSUMER SERVICES

COLORADO DEPARTMENT OF AGRICULTURE

RULES CONCERNING THE USE OF IRREVOCABLE LETTERS OF CREDIT IN LIEU OF SURETY BONDS UNDER THE COLORADO FARM PRODUCTS ACT AND THE COLORADO COMMODITY WAREHOUSE ACT

STATEMENT OF BASIS AND PURPOSE

These rules are adopted pursuant to sections 1 1-35-101 .5, 12-16-1 17, and 12-16-210 C.R.S.

The purpose of these rules is to implement the statutes which authorize submission of irrevocable letters of credit in lieu of surety bonds by licensees under the Colorado Farm Products Act and Commodity Warehouse act.

The use of irrevocable letters of credit in lieu of surety bonds by licensees raises several issues of administration. The primary issue is that once a letter of credit has expired or has been cancelled, there is no recourse against it for later-discovered claims. This is unlike the case of surety bonds, against which claims may be pursued even after their expiration or cancellation. These rules address this problem by imposing a minimum ninety-day notice period for the expiration or cancellation of letters of credit. This is believed to be a reasonable period of time in which to allow the Commissioner to determine whether there are any claims against the licensee which could cause the Commissioner to draw upon the letter of credit under the applicable laws. This notice period, while imposing certain duties on the licensee, is deemed appropriate and necessary to protect the interests of those persons for whose protection the bonding requirements of the law exist.

The rules also address the issue of the use by a licensee of a combination of letters of credit and surety bonds in satisfaction of its bonding requirements. Because of the inability to each the proceeds of a letter of credit after its expiration or cancellation, noted above, the rules provide that the letters of credit will be drawn on prior to the surety bonds.

RULES

- (1) These rules are adopted pursuant to Sections 1 1-35-101 .5, 12-16-1 17, and 12-16-210. C.R.S., by the Colorado Commissioner of Agriculture, to aid in the administration and enforcement of the Colorado Farm Products Act and the Colorado Commodity Warehouse Act, Title 1 2, Article 1 6, C.R.S. These rules shall apply to all irrevocable letters of credit which are submitted by licensees under those Acts, in lieu of the surety bonds required by those Acts as a condition of licensure.
- (2) An irrevocable letter of credit issued by a state or national bank or a state or federal savings and loan association doing business in this state may be submitted to the department in lieu of a surety bond required by the provisions of Title 12, Article 16, C.R.S.
- (3) The beneficiary named in the letter of credit shall be the Colorado Commissioner of Agriculture, in favor of the people of the state of Colorado. Payment shall be made immediately upon presentment of sight draft(s) signed by the Commissioner of Agriculture or his designated representative, without accompanying supporting documentation.
- (4) All letters of credit shall conform to a required format. A standard letter of credit form embodying the required format shall be made available upon request from the Division of Inspection and Consumer Services, Colorado Department of Agriculture, 2331 W 31st Avenue, Denver, Colorado 80211.
- (5) A sight draft upon a letter of credit may be presented for payment only for the reasons that surety bond proceeds may be demanded for disbursement under the provisions of Title 12, Article 16, C.R.S. However, the proceeds of the letter of credit may be used to satisfy claims which arose prior to the date on which said letter of credit was issued.
- (6) All letters of credit must be negotiable at a financial institution located within Colorado.
- (7) Letters of credit shall have a term of one (1) year, and shall be automatically renewable for additional one (1) year terms. A letter of credit may be revoked by the licensee or issuer only at its expiration date, by giving the Commissioner of Agriculture at least ninety (90) days written notice, prior to the expiration date. Notice is deemed to have been given as of its receipt by the Commissioner of Agriculture. Upon such notice timely received, the licensee shall be required to arrange for substitution of a suitable surety bond or another irrevocable letter of credit, at least sixty (60) days prior to the expiration of the letter of credit. If the Commissioner does not timely receive satisfactory evidence of such arrangements, then he shall proceed in accordance with the provisions of Sections 12-16-108, and/or 12-16-206.5, C.R.S., as applicable.

- (8) If a licensee desires to surrender its license and requests the release of a letter of credit, the licensee must return its license and make written request by certified mail, return receipt requested, for the release of the letter of credit. The Commissioner shall retain the letter of credit for a period of ninety (90) days following his receipt of the written request and the returned license, or until such time that the Commissioner is satisfied that no claims against the license exist, whichever period is longer, before notice of release is transmitted to the issuer.
- (9) In the event that a licensee desires to substitute a surety bond for a letter of credit then in possession of the Commissioner of Agriculture, the letter of credit shall remain in force for a period of ninety (90) days following the effective date of the surety bond, or for such time as may be required to fully ascertain the existence of any claims against the licensee, whichever period is longer. Thereafter, notice of release shall be transmitted to the issuer of the letter credit.
- (10) In the event that a plurality of letters of credit from any number of issuers are presented in satisfaction of a licensee's bonding obligation, the Commissioner may satisfy claims under the applicable provisions of Title 12, Article 16, C.R.S., by presentment of sight drafts against one (1) or more such letters of credit, without regard to proration.
- (11) A licensee shall be required to augment letters of credit in any situation where it would be required to increase its coverage under a-surety bond; such augmentation shall be commensurate to the increased surety bond coverage requirement. In the event of a decreased surety bond requirement, a new letter of credit for such lesser amount may be substituted for a prior letter upon the renewal date of the prior letter.
- (12) A licensee or prospective licensee may present any combination of letters of credit and surety bonds in satisfaction of its bonding requirement under the applicable provisions of Title 12, Article 16, C.R.S. In making disbursements for claims, the Commissioner shall draw upon the letter(s) of credit first and make demand upon surety bond(s) second.